

Environmental Poverty Law Program

November 28, 2000

Ann E. Goode
Director, Office of Civil Rights
United States Environmental Protection Agency
Mail Code 1201A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

16R-00-R4

Re: Environmental Justice Complaint
Anson County Solid Waste Landfill
Wadesboro, North Carolina

Dear Ms. Goode:

Pursuant to Title VI of the Civil Rights Act of 1964 and Executive Order 12898, the Environmental Poverty Law Program (EPLP), on behalf of its clients, residents of Polkton, North Carolina, and John Runkle, on behalf of his client, Anson County Citizens Against Chemical Toxins in Underground Storage (CACTUS) submit the following Title VI complaint.

We request that the United States Environmental Protection Agency (EPA) initiate an investigation into the North Carolina Department of the Environment and Natural Resources' issuance of a June 1, 2000 construction permit (hereinafter "Solid Waste Permit") allowing Chambers Development of North Carolina, Inc. to construct a Municipal Solid Waste Landfill Facility adjacent to a predominantly African-American community in Polkton, North Carolina.

We contend that the North Carolina Department of the Environment and Natural Resources's June 1, 2000 issuance of the Solid Waste Permit for the Chambers Development of North Carolina, Inc. landfill was an act that constitutes: (1) an intentional act of discrimination in violation of

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Title VI, EPA regulations implementing Title VI and the Fourteenth Amendment to the United States Constitution; or alternatively (2) an act which will produce a racially disparate impact in violation of Title VI and EPA regulations implementing Title VI. We therefore respectfully request that the EPA revoke the Solid Waste Permit issued to Chambers Development of North Carolina, Inc. We also request that the EPA make an investigation into the permitting policy and rules used by NCDENR to make decisions regarding Municipal Solid Waste Landfill Facility Permits to ensure that the letter and spirit of Title VI are carried out in this permitting process.

Title VI prohibits discrimination on the basis of race, color, or national origin in programs or activities receiving federal financial assistance. 42 U.S.C. 2000d. Title VI bars both intentional acts of discrimination and disproportionate impact in the administration of environmental problems. Specifically, the regulation states that :

[a] recipient [of federal funds] shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of substantially defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex.

40 C.F.R. 7.35(b).

The regulation also directly address the siting of facilities:

A recipient shall not chose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this Part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.

40 C.F.R. 7.35(c).

A violation of Title VI has occurred in this situation because (1) a recipient of federal funds (2) used methods of administering their

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programs that resulted in discrimination to individuals of particular race, color or national origin.

1. Federal Funding

On June 1, 2000 the North Carolina Department of Environment and Natural Resources (NCDENR) issued a final construction permit for Chambers Development, Inc. to begin construction of the landfill. NCDENR receives federal funding from the EPA and is therefore required to comply with Title VI.

2. Discrimination

The landfill will cause the most impacts on residents living along two roads (Boylin Road and a long dirt road) within 1/2 mile of the proposed landfill site. All of these residents are African-American. A door-to-door survey conducted by Anson County residents this year indicate that 47% residents living within 2 miles of the proposed landfill are non-white. This survey is attached as Exhibit A. The most recent statistical compilation available (July 1999) indicates that North Carolina's total non-white population is 24.12%. Obtained from the North Carolina Office of State Planning.

The landfill will cover 240 acres and be at least 120 feet high. It will accept approximately 1,500 tons of waste per day. The landfill will serve populations across North Carolina and South Carolina – not just the residents of Anson County. This means that those individuals living near the landfill and in surrounding areas will bear the burden of any hazards disproportionate to the population at large.

It was not until 1997, 6 years after Chambers first notified the state of their intent to site a landfill in Anson County that the North Carolina Department of Environment and Natural Resources did any research into racial disparity issues. In fact, it was not until our clients contacted NCDENR repeatedly with the issue that they did anything. Peggy Wittie, with the Division of Solid Waste conducted an assessment in November, 1997 using census block tract data. This assessment led her to advise Bill Meyer, head of the Division of Solid Waste: "Given my experience in demographic and ethnic analyses, this landfill is surrounded by predominantly minority communities." (See attached Exhibit B).

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Unfortunately, the state did not conduct any further study into the issue of the landfill's disproportionate impacts.

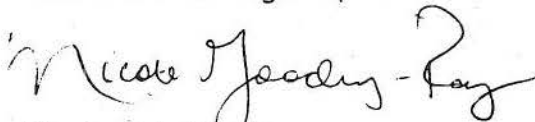
Subsequent to the permitting of this landfill, NCDENR enacted an Environmental Equity Policy which seeks to serve the same purpose as Title VI. It requires NCDENR to "[a]ddress environmental equity issues in permitting decisions for projects potentially having a disparate impact on communities protected by Title VI of the Civil Rights Act of 1964." (See Exhibit E). Title VI, however, clearly required NCDENR to address these issues prior to the issuance of this policy. The failure of NCDENR to perform a substantive analysis of civil rights issues involved in the Solid Waste Permit is a clear violation of Title VI and its current Environmental Equity Policy.

State administrative proceedings have been initiated challenging the issuance of the permit. These proceeds are still in progress. However, construction of the landfill has already begun and the landfill is scheduled to begin operation at any time.

To assist the Agency in the consideration and investigation of this complaint, we have enclosed materials which explain the factual background and legal issues implicated by the siting of the landfill in Polkton. In addition to the survey and memorandum described above (Exhibits A and B, respectively), transcript of the July 13, 1999 Public Hearing on the solid waste permit (Exhibit C) and comments filed by [REDACTED] and John Runkle on behalf of the residents (Exhibit D) are attached.

Thank you for your kind attention to this matter. If you have any questions, please do not hesitate to contact either Nicole Gooding-Ray at (919) 732-8137 or John Runkle at (919) 942-0600.

With warmest regards,



Nicole Gooding-Ray
Environmental Poverty Law Program



John Runkle
Attorney

cc: Bill Meyers, NCDENR, Division of Solid Waste
Bill Holman, NC Department of the Environment and Natural Resources
Chambers Development of North Carolina, Inc.